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*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
(OAKLAND DIVISION)

RITZ CAMERA & IMAGE, LLC  
a Delaware Limited Liability Company,

On Behalf of Itself and Others  
Similarly Situated

Plaintiff,

v.

SANDISK CORPORATION,

Defendant.

CASE NO. CV 10-02787-SBA

**PLAINTIFF'S NOTICE OF  
MOTION AND MOTION  
TO TRANSFER PLAINTIFF'S  
INTEREST**  
[Fed. R. Civ. P. 25(c)]

Hearing Date: May 14, 2013  
Judge: Hon. Sandra Brown Armstrong  
Time: 1:00 p.m.  
Place: Courtroom 1, Oakland

**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on May 14, 2013, at 1:00 p.m., or as soon thereafter as  
counsel may be heard by the above-entitled Court, located at 1301 Clay Street, Oakland,  
California, in the courtroom of Senior District Judge, Hon. Sandra Brown Armstrong, Plaintiff  
Ritz Camera & Image, LLC will and hereby does move the Court to substitute Alfred T.

Giuliano, Chapter 7 Trustee of Ritz Camera & Image, LLC, for Ritz Camera & Image, LLC as the Plaintiff in this action pursuant to Fed. R. Civ. P. 25(c). Since the commencement of this action in 2010, Ritz Camera & Image, LLC ("Ritz") has sought bankruptcy protection. The ownership of its legal claim asserted against SanDisk Corp. has passed to the Estate.

Defendant has opposed this Motion.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

Under Rule 25(c), if a cause of action is transferred during the course of litigation, the transferee may be substituted for the original party.<sup>1</sup> "It is well settled that the right to pursue causes of action formerly belonging to the debtor . . . vests in the trustee for the benefit of the estate . . . ." *Bauer v. Commerce Union Bank*, 859 F.2d 438, 441 (6th Cir. 1988). Therefore, "[w]hen, as here, the Plaintiffs' causes of action vest in the bankruptcy trustee after the initiation of the lawsuit, Rule 25(c) ensures that the proper person litigates the claims." *Hutchinson v. Delaware Sav. Bank FSB*, 410 F. Supp. 2d 374, 382 (D.N.J. 2006); see *Adels v. Bierbach ex rel. Elders*, 2011 WL 1457132, at \*4-\*5 (M.D. Pa. Apr. 15, 2011) (explaining that "[t]ransfers of property to a Chapter 7 Trustee following the bankruptcy of a party are included among these transfers of interest that courts have found support [Rule 25(c)] substitution" and citing examples). This rule is "wholly permissive," and includes "no time limit on moving to substitute" in place of the transferee. 7C Charles A. Wright et al., *Federal Practice and Procedure* § 1958 (3d ed. 2012).<sup>2</sup>

<sup>1</sup> Rule 25(c) covers transfer of an interest during the pendency of a case. Rule 17(a) covers situations in which an interest is transferred before the case is filed. See *F.D.I.C. v. Deglau*, 207 F.3d 153, 159 n.2 (3d Cir. 2000).

<sup>2</sup> The service of a bankruptcy trustee as named plaintiff in a class action is not uncommon. For example, Chapter 11 trustee for Circuit City is currently the putative class representative in another antitrust class action in the Northern District of California, assigned to the Hon. Yvonne Gonzalez Rogers. See *Siegel v. LG Chem, Ltd.*, No. 4:12-cv-05678-YGR (N.D. Cal. filed Nov. 5, 2012), consolidated with *In re Lithium Ion Batteries Antitrust Litigation*, 4:13-md-02420-YGR (N.D. Cal. MDL established Feb. 6, 2013).

1 Upon transfer, the party which enters a case as the legal successor receives the status which the  
 2 predecessor possessed at the time the successor entered the case. *See Brook, Weiner, Sered,*  
 3 *Kreger & Weinberg v. Coreq, Inc.*, 53 F.3d 851, 852 (7th Cir. 1995) (“[A] successor takes over  
 4 without any other change in the status of the case . . .”).

5  
 6 Because Ritz’s legal claim against SanDisk has passed to the Estate, Ritz respectfully  
 7 requests that the Court substitute Alfred T. Giuliano, Chapter 7 Trustee, as the Plaintiff pursuant  
 8 to Rule 25(c). A proposed Order is attached.

9 Dated: March 19, 2013

Respectfully submitted,

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 24 Attorneys for Plaintiff  
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**CERTIFICATE OF SERVICE**

I, Colleen Duffy-Smith, hereby certify that on March 19, 2013 the foregoing has been served upon counsel for San Disk via the Court's electronic notification

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/s/ Colleen Duffy-Smith

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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RITZ CAMERA & IMAGE, LLC  
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**CASE NO. CV 10-02787-SBA**

**[PROPOSED] ORDER GRANTING  
PLAINTIFF'S MOTION TO  
TRANSFER PLAINTIFF'S  
INTEREST**

Having reviewed Plaintiff's Motion to Transfer Plaintiff's Interest and for good cause shown,

IT IS ORDERED that the Estate of Alfred T. Giuliano Chapter 7 Trustee of Ritz Camera  
& Image, LLC is substituted for Ritz Camera & Image, LLC as party Plaintiff.

Dated: \_\_\_\_\_, 2013

Honorable Sandra Brown Armstrong  
U.S. District Court Judge